

1 BORIS FELDMAN, State Bar No. 128838
Email: boris.feldman@wsgr.com
2 IGNACIO E. SALCEDA, State Bar No. 164017
Email: isalceda@wsgr.com
3 WILSON SONSINI GOODRICH & ROSATI
4 Professional Corporation
5 650 Page Mill Road
Palo Alto, CA 94304-1050
6 Telephone: (650) 493-9300
7 Facsimile: (650) 565-5100

8 *Attorneys for Defendants Snap Inc.,*
9 *Evan Spiegel, Robert Murphy,*
Andrew Vollero, Joanna Coles,
10 *A.G. Lafley, Mitchell Lasky,*
11 *Michael Lynton, Stanley Meresman,*
12 *Scott D. Miller, and*
Christopher Young

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 JENNIFER SIMPSON, Individually and on
17 Behalf of All Others Similarly Situated,

18 Plaintiff,

19 vs.

20 SNAP INC.,
21 EVAN SPIEGEL,
22 ROBERT MURPHY,
23 ANDREW VOLLERO,
24 JOANNA COLES,
25 A.G. LAFLEY,
26 MITCHELL LASKY,
27 MICHAEL LYNTON,
STANLEY MERESMAN,
28 SCOTT D. MILLER,
CHRISTOPHER YOUNG,
MORGAN STANLEY & CO. LLC,
GOLDMAN, SACHS, & CO.,

Case No. 2:17-CV-4403

CLASS ACTION

**NOTICE OF REMOVAL OF
STATE COURT ACTION**

1 J.P. MORGAN SECURITIES LLC,
2 DEUTSCHE BANK SECURITIES INC.,
3 BARCLAYS CAPITAL INC.,
4 CREDIT SUISSE SECURITIES (USA)
5 LLC,
6 ALLEN & COMPANY LLC,
7 BTIG, LLC,
8 C.L. KING & ASSOCIATES, INC.,
9 CITIGROUP GLOBAL MARKETS
10 INC.,
11 CONNAUGHT (UK) LIMITED,
12 COWEN AND COMPANY, LLC,
13 EVERCORE GROUP, LLC,
14 JEFFERIES LLC,
15 JMP SECURITIES LLC,
16 LIONTREE ADVISORS LLC,
17 LUMA SECURITIES LLC,
18 MISCHLER FINANCIAL GROUP,
19 INC.,
20 OPPENHEIMER & CO. INC.,
21 RBC CAPITAL MARKETS, LLC,
22 SAMUEL A. RAMIREZ & CO., INC.,
23 STIFEL FINANCIAL CORP.,
24 SUNTRUST ROBINSON HUMPHREY,
25 INC.,
26 THE WILLIAMS CAPITAL GROUP,
27 L.P.,
28 UBS SECURITIES LLC, and
WILLIAM BLAIR & COMPANY,
L.L.C.,

Defendants.

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
2 THE CENTRAL DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. §§ 1331, 1441, and
4 1446, and 15 U.S.C. §§ 77p(c) and 77v(a), defendants Snap Inc. (“Snap” or the
5 “Company”), Evan Spiegel, Robert Murphy, Andrew Vollero, Joanna Coles, A.G.
6 Lafley, Mitchell Lasky, Michael Lynton, Stanley Meresman, Scott D. Miller, and
7 Christopher Young (collectively, the “Snap Defendants”) hereby remove to this
8 Court the state court action described below:

9 **BACKGROUND**

10 1. On May 23, 2017, Plaintiff Jennifer Simpson filed this civil action in
11 the Superior Court of California, County of Los Angeles (“Superior Court”),
12 captioned *Jennifer Simpson v. Snap Inc., et al.*, Case No. BC662444. On the same
13 date, the Snap Defendants, by and through their counsel, became aware of and
14 obtained a copy of the Complaint. A copy of the Complaint and the related Civil
15 Cover Sheet is attached as Exhibit A.

16 2. The Snap Defendants have not pleaded, answered, or otherwise
17 appeared in the case.

18 **PROCEDURAL REQUIREMENTS**

19 3. Removal is timely pursuant to 28 U.S.C. § 1446(b) because this
20 Notice of Removal is being filed less than thirty days after the Snap Defendants
21 received a copy of the Complaint.

22 4. Pursuant to 28 U.S.C. § 1446(d), the Snap Defendants will promptly
23 serve a copy of this Notice on counsel for Plaintiff and will file a copy of this
24 Notice with the Clerk of the Superior Court.

25 **GROUND FOR REMOVAL**

26 5. Removal of this action is proper on two independent grounds: 28
27 U.S.C. §1441(a) and 15 U.S.C. § 77p(c).
28

1 **A. First Ground for Removal: 28 U.S.C. § 1441(a)**

2 6. This action is removable under 28 U.S.C. § 1441(a) because the
3 Complaint alleges solely federal claims. Complaint (“Compl.”) ¶¶ 83, 93, 100
4 (alleging claims under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933
5 (the “Securities Act”), 15 U.S.C. §§ 77k, 77l(a)(2), and 77o).

6 7. Section 1441(a) of the Judicial Code provides that “[e]xcept as
7 otherwise expressly provided by Act of Congress, any civil action brought in a
8 State court of which the district courts of the United States have original
9 jurisdiction, may be removed by the defendant or the defendants, to the district
10 court of the United States for the district and division embracing the place where
11 such action is pending.”

12 8. This Court has original jurisdiction over this civil action because the
13 federal claims alleged “aris[e] under the Constitution, laws, or treaties of the
14 United States.” 28 U.S.C. § 1331.

15 9. Venue is proper because this Court is the “district court of . . . the
16 district . . . embracing the place where such action is pending.” *Id.* § 1441(a).

17 **B. Second Ground for Removal: 15 U.S.C. § 77p(c)**

18 10. Section 16(c) of the Securities Act, 15 U.S.C. § 77p(c), provides an
19 independent ground for removal. Section 16(c) provides:

20 Any covered class action brought in any State court involving a
21 covered security, as set forth in subsection (b), *shall be removable* to
22 the Federal district court for the district in which the action is pending,
23 and shall be subject to subsection (b).

24 15 U.S.C. § 77p(c) (emphasis added). Under subsection (b), a “covered class
25 action brought in any State court involving a covered security” is a suit that, *inter*
26 *alia*, alleges “an untrue statement or omission of a material fact in connection with
27 the purchase or sale of a covered security.” *Id.*; 15 U.S.C. § 77p(b)(1).

28 11. This case is a “covered class action” under Section 77p. The statute

1 defines a covered class action in relevant part as one in which “damages are sought
 2 on behalf of more than 50 persons or prospective class members” and common
 3 questions predominate. 15 U.S.C. § 77p(f)(2)(A)(i)(I). The Complaint’s well-
 4 pleaded allegations unmistakably satisfy those criteria. *See Holmes Group, Inc. v.*
 5 *Vornado Air Circulation Sys.*, 535 U.S. 826, 830 n.2 (2002) (well-pleaded-
 6 complaint rule governs whether a case is removable under 28 U.S.C. § 1441(a)),
 7 *abrogated by statute on other grounds, Peaches & Cream LLC v. Robert W. Baird*
 8 *& Co.*, 2015 U.S. Dist. LEXIS 42575 (E.D.N.Y. Mar. 31, 2015). Plaintiff seeks to
 9 recover damages “on behalf of a class consisting of all persons or entities who
 10 acquired the common stock of Snap . . . in connection with the IPO[.]” Compl. ¶¶
 11 76, 91, 98, Prayer for Relief. Plaintiff “believes that there are hundreds of
 12 members in the proposed Class.” *Id.* ¶ 77. And Plaintiff asserts that “[c]ommon
 13 questions of law and fact exist as to all members of the Class and predominate over
 14 any questions solely affecting individual members of the Class.” *Id.* ¶ 80.

15 12. The Snap securities at issue are “covered securities” because they are
 16 traded on the New York Stock Exchange, a national securities exchange. 15
 17 U.S.C. § 77p(f)(3); *id.* 15 U.S.C. § 77r(b)(1); Compl. ¶ 77.

18 13. The Complaint alleges “an untrue statement or omission of a material
 19 fact in connection with the purchase or sale of a covered security[.]” 15 U.S.C. §
 20 77p(b)(1); Compl. ¶ 85 (alleging that Registration Statement for Snap’s initial
 21 public offering contained “untrue statements of material facts” and “omitted to
 22 state material facts”); *id.* ¶ 90 (alleging that Plaintiff purchased Snap securities
 23 pursuant to Registration Statement).

24 14. In sum, this case is a covered class action involving covered securities
 25 under 15 U.S.C. § 77p(b). It is therefore removable to this Court, which is “the
 26 Federal district court for the district in which the action is pending[.]” *Id.* § 77p(c).

27 15. This reading of Section 77p(c) – allowing removal of covered class
 28 actions alleging only Securities Act claims, as in this case – has divided the judges

1 of this Court.¹ The dispute centers on whether the words “as set forth in subsection
 2 (b)” refer to the *state law* claims referenced in the introductory language of
 3 subsection (b),² or, as the Snap Defendants maintain, to “federal claims of the type
 4 described in subsections (b)(1) and (b)(2).”³ Underscoring the split, one judge of
 5 this Court upheld removal in 2005, and issued a contrary holding three years later.
 6 *Layne v. Countrywide Financial Corp.*, 2008 WL 9476380, at *1 & n.1 (C.D. Cal.
 7 July 8, 2008) (rejecting *Purowitz*). Other District Courts are similarly divided.
 8 *Compare, e.g., Northumberland Cty. Ret. Sys. v. GMX Res., Inc.*, 810 F. Supp. 2d
 9 1282, 1286-87 (W.D. Okla. 2011) (Section 77p(c) allows removal of Securities Act
 10 covered class actions, citing cases), *with, e.g., Plymouth Cty. Ret. Sys. v. Model N,*
 11 *Inc.*, 2015 WL 65110, at *2-3 (N.D. Cal. Jan. 5, 2015) (Section 77p(c) allows
 12 removal only of state law actions, citing cases).

13 16. The Solicitor General of the United States, however, has recently
 14 taken sides in this debate – in favor of removal as argued by the Snap Defendants.

15 ¹ *Compare Purowitz v. DreamWorks Animation SKG, Inc.*, 2005 WL 6794770,
 16 at *2-3 (C.D. Cal. Nov. 15, 2005) (holding that Section 77p(c) allows removal of
 17 Securities Act covered class actions), and *Brody v. Homestore, Inc.*, 240 F. Supp.
 18 2d 1122, 1124 (C.D. Cal. 2003) (same), *with W. Va. Laborers Trust Fund v. STEC,*
 19 *Inc.*, 2011 WL 6156945, at *3-5 (C.D. Cal. Oct. 7, 2011) (holding that Section
 20 77p(c) allows removal only for *state law* actions, yet “acknowledg[ing] that [this]
 21 interpretation may produce strange results whereby class actions based on state law
 22 are removable, while class actions based on the Securities Act are not
 23 removable.”), and *Pipefitters Local 522 & 633 Pension Trust Fund v. Salem*
 24 *Commc’ns Corp. (Pipefitters)*, 2005 WL 6963459, at *2-3 (C.D. Cal. June 28,
 25 2005).

26 ² See 15 U.S.C. § 77p(b) (“No covered class action *based upon the statutory or*
 27 *common law of any State* . . . may be maintained in any State or Federal court by
 28 any private party alleging— (1) an untrue statement or omission of a material fact
 in connection with the purchase or sale of a covered security” (emphasis
 added)); *STEC*, 2011 WL 6156945, at *3-5; *Pipefitters*, 2005 WL 6963459, at *2-
 3.

³ *Purowitz*, 2005 WL 6794770, at *2 (rejecting contrary reading as “anomalous”
 and holding that “the words ‘as set forth in subsection (b)’ appear to be shorthand
 not for the concept that such claims must be based on state law, but rather for the
 lengthier contents of subsections (b)(1) and (b)(2), which set forth the types of
 claims that are permissible as federal but not as state law claims.”) (citation
 omitted).

1 The conclusion that covered class actions alleging only Securities Act claims are
 2 removable under 15 U.S.C. § 77p(c) is supported by the Solicitor General’s recent
 3 brief urging the U.S. Supreme Court to grant certiorari in *Cyan, Inc. v. Beaver*
 4 *County Employees Retirement Fund*, U.S. Supreme Court No. 15-1439. See Brief
 5 for the United States as *Amicus Curiae* (“SG Br.”) at 1. A copy of the Solicitor
 6 General’s brief is attached as Exhibit B.

7 17. The Solicitor General argued that 15 U.S.C. § 77p(c) – the removal
 8 provision discussed above – “is properly construed to allow removal of state-court
 9 suits” alleging claims like those alleged in this case. SG Br. at 13. Specifically,
 10 the Solicitor General argued that 15 U.S.C. § 77p(c) “authorizes removal to federal
 11 court of covered class actions that are brought under the [Securities] Act and allege
 12 the types of misconduct that are described in Section 77p(b).” SG Br. at 13
 13 (capitalization removed).

14 18. This case meets that description. It is a covered class action involving
 15 a covered security. *Supra* ¶¶ 11-12. It is brought under the Securities Act. Compl.
 16 ¶¶ 83, 93, 100. And it alleges “the type[] of misconduct that [is] described in
 17 Section 77p(b)” – namely, untrue statements or omissions of material fact in
 18 connection with the purchase or sale of a covered security. *Supra* ¶ 13.
 19 Accordingly, it is removable under Section 77p(c).

20 **C. The Securities Act’s Anti-Removal Provision Does Not Bar**
 21 **Removal Under Either 28 U.S.C. § 1441(a) or 15 U.S.C. § 77p(c)**

22 19. The Securities Act elsewhere contains an anti-removal provision,
 23 which provides: “Except as provided in Section 77p(c) of this title, no case arising
 24 under [the Securities Act] and brought in any State court of competent jurisdiction
 25 shall be removed to any court of the United States.” 15 U.S.C. § 77v(a). But that
 26 provision does not bar removal here, for two independent reasons.

27 20. First, the anti-removal provision has an explicit carve-out for removal
 28 “as provided in Section 77p(c).” *Id.* Section 77p(c) is the very section that

1 authorizes removal in this case. *See supra* ¶¶ 10-18. This case therefore is within
2 the carve-out from the anti-removal provision.

3 21. Second, although the Court need not even reach the issue, the state
4 court lacks jurisdiction over this class action, as discussed *infra* at ¶¶ 22-34.
5 Therefore, it is not a court of “competent jurisdiction” for purposes of the anti-
6 removal provision, *infra* ¶¶ 28, 34, and the anti-removal provision does not apply.

7 i. SLUSA Divested State Courts of Jurisdiction

8 22. In 1998, Congress amended the Securities Act. That revision, the
9 Securities Litigation Uniform Standards Act of 1998, Pub. L. No. 105-353, 112
10 Stat. 3227, is commonly known as SLUSA. Among other things, SLUSA added to
11 the Securities Act the removal provision codified at 15 U.S.C. § 77p(c) and
12 discussed above.

13 23. SLUSA also amended Section 22(a) of the Securities Act, 15 U.S.C. §
14 77v(a), which contains the jurisdictional provision for claims brought under the
15 Act. It provides as follows, with the SLUSA-added language in italics:

16 The district courts of the United States . . . shall have jurisdiction of
17 offenses and violations under [the Securities Act] and, concurrent with
18 State and Territorial courts, *except as provided in section 77p of this*
19 *title with respect to covered class actions*, of all suits in equity and
20 actions at law brought to enforce any liability or duty created by [the
21 Securities Act].

22 *Id.*

23 24. Thus, after SLUSA, state courts have concurrent jurisdiction over
24 claims arising under the Securities Act *except* as to “covered class actions” as
25 defined in Section 77p. This case is a covered class action under Section 77p.
26 *Supra* ¶ 11. The Superior Court accordingly lacks jurisdiction.

1 25. The issue whether SLUSA divested state courts of jurisdiction over
2 covered class actions asserting only Securities Act claims is the subject of the *Cyan*
3 cert petition. *See supra* ¶ 16; 2016 WL 3040512 (*Cyan* petition).

4 26. As the *Cyan* petitioners note, a number of District Courts have
5 adopted the Snap Defendants' reading of 15 U.S.C. § 77v(a) and held that SLUSA
6 divested state courts of jurisdiction. *E.g.*, *Gaynor v. Miller*, 205 F. Supp. 3d 935
7 (E.D. Tenn. 2016); *Iron Workers Dist. Council of New Eng. Pension Fund v.*
8 *Moneygram Int'l, Inc. (Iron Workers)*, 204 F. Supp. 3d 784 (D. Del. 2016); *Hung*
9 *v. iDreamSky Tech. Ltd.*, 2016 U.S. Dist. LEXIS 8389 (S.D.N.Y. Jan. 25, 2016);
10 *Wunsch v. Am. Realty Capital Props.*, 2015 U.S. Dist. LEXIS 48759 (D. Md. Apr.
11 14, 2015); *Lapin v. Facebook, Inc.*, 2012 U.S. Dist. LEXIS 119924 (N.D. Cal.
12 Aug. 23, 2012); *Knox v. Agria Corp.*, 613 F. Supp. 2d 419 (S.D.N.Y. 2009).

13 27. As the *Cyan* petitioners further note, a number of District Courts have
14 also held to the contrary. *E.g.*, *Westmoreland Cty. Emp. Ret. Fund v. Inventure*
15 *Foods Inc.*, 2016 U.S. Dist. LEXIS 184075 (D. Ariz. Aug. 10, 2016); *Rivera v.*
16 *Fitbit, Inc.*, 2016 U.S. Dist. LEXIS 98202 (N.D. Cal. July 27, 2016); *Pac. Inv.*
17 *Mgmt. Co. LLC v. Am. Int'l Grp., Inc.*, 2015 U.S. Dist. LEXIS 75355 (C.D. Cal.
18 June 10, 2015). In addition, the Solicitor General argues that SLUSA did not
19 divest state courts of jurisdiction. SG Br. at 6-12.

20 28. In the Snap Defendants' view, the courts holding that SLUSA
21 divested state courts of jurisdiction in these cases have the better argument. As one
22 such court has explained:

23 “By 1998, Congress concluded that plaintiffs were circumventing the
24 requirements of the PSLRA [Private Securities Litigation Reform Act
25 of 1995] by filing private securities class actions in state rather than
26 federal court. SLUSA was designed to close this perceived loophole by
27 authorizing the removal and federal preemption of certain state court
28 securities class actions.”

1 * * *

2 “[B]ecause the PSLRA failed to achieve Congress’s goal in curtailing
3 meritless class actions alleging fraud, Congress enacted the SLUSA to
4 ‘make Federal court the exclusive venue for securities class actions.’”

5 * * *

6 “[C]overed class actions” arising under the Securities Act are properly
7 removed to federal court. SLUSA divested state courts of jurisdiction
8 over “covered class actions” under the Securities Act, thereby giving
9 federal courts exclusive jurisdiction over such suits. Therefore, state
10 courts are divested of jurisdiction over “covered class actions” under
11 the Securities Act and, hence, are not “courts of competent jurisdiction”
12 for these actions.

13 *Iron Workers*, 204 F. Supp. 3d at 790-91, 793 (citations omitted). That conclusion
14 is exactly right. The Superior Court never had jurisdiction over this case. It
15 therefore is not a “court of competent jurisdiction.” 15 U.S.C. § 77v(a). That is
16 another reason why the anti-removal provision is inapplicable here.⁴

17 ii. Snap Has Adopted An Exclusive Federal Forum Provision

18 29. The Superior Court also lacks jurisdiction for a second reason: The
19 Company’s organizing documents provide that federal courts are the exclusive
20 forum for the causes of action here asserted.

21 30. The Company’s Certificate of Incorporation provides: “Unless the
22 Company consents in writing to the selection of an alternative forum, the federal
23 district courts of the United States of America shall be the exclusive forum for the
24 resolution of any complaint asserting a cause of action arising under the Securities
25 Act of 1933. Any person or entity purchasing or otherwise acquiring any interest

26
27 ⁴ If this Court even reaches the issue of the state court’s jurisdiction, the Court
28 may, if it wishes, stay its hand until the Supreme Court decides the *Cyan* petition
and, if certiorari is granted, the merits of *Cyan*.

1 in any security of the Corporation shall be deemed to have notice of and consented
 2 to the provisions of this Amended and Restated Certificate of Incorporation.”
 3 Amended and Restated Certificate of Incorporation of Snap Inc., art. VII (January
 4 26, 2017) (“Article VII”).

5 31. The Complaint “assert[s] a cause of action arising under the Securities
 6 Act of 1933.” Article VII; Compl. ¶¶ 1, 14. The Company has not consented to an
 7 alternative forum. Article VII. Therefore, “the federal district courts” are the
 8 “exclusive forum for the resolution of [this] complaint[.]” *Id.*

9 32. Because Snap is a Delaware corporation, Compl. ¶ 19, Delaware law
 10 governs the Company’s internal affairs, including the interpretation and
 11 enforcement of its Certificate of Incorporation. *See CTS Corp. v. Dynamics Corp.*
 12 *of Am.*, 481 U.S. 69, 89 (1987); *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982).
 13 And under Delaware law, Article VII is enforceable as a contract between the
 14 Company and its stockholders. As the Delaware Chancery Court put it: “[B]ylaws,
 15 together with the *certificate of incorporation* and the broader [Delaware General
 16 Corporation Law], form part of a flexible *contract between corporations and*
 17 *stockholders*,” and stockholders “assent to be bound” when they purchase the
 18 corporation’s stock. *Boilermakers Local 154 Retirement Fund v. Chevron Corp.*,
 19 73 A.3d 934, 940 (Del. Ch. 2013) (emphasis added); *see also STAAR Surgical Co.*
 20 *v. Waggoner*, 588 A.2d 1130, 1136 (Del. 1991) (“[A] corporate charter is both a
 21 contract between the State and the corporation, and the corporation and its
 22 shareholders.”), *abrogated by statute on other grounds*, *Nguyen v. View, Inc.*, 2017
 23 Del. Ch. LEXIS 97, *27 (Del. Ch. June 6, 2017); *In re CytRx Corp. Stockholder*
 24 *Derivative Litig.*, 2015 U.S. Dist. LEXIS 176966, at *13 (C.D. Cal. Oct. 30, 2015)
 25 (“[T]he CytRx shareholders manifested their consent to the Delaware corporate
 26 framework by buying shares and agreeing to the certificate of incorporation
 27 [C]ontrary to what Plaintiffs would have us believe, mutual consent and notice
 28 exist here.”).

1 33. Where, as here, an action is filed in a forum barred by a forum
2 selection clause, dismissal for lack of subject matter jurisdiction is appropriate.
3 *See TradeComet.com LLC v. Google, Inc.*, 647 F.3d 472, 475 (2d Cir. 2011) (“We
4 have affirmed judgments that enforced forum selection clauses by dismissing cases
5 for lack of subject matter jurisdiction under Rule 12(b)(1) . . .”).

6 34. The Superior Court accordingly lacks jurisdiction over this action.
7 Because the Superior Court is therefore not a “court of competent jurisdiction,” 15
8 U.S.C. § 77v(a), the anti-removal provision is inapplicable.

9
10 Dated: June 13, 2017

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

11
12
13 By: /s/ Boris Feldman
Boris Feldman

14 *Attorneys for Defendants Snap Inc., Evan*
15 *Spiegel, Robert Murphy, Andrew Vollero,*
16 *Joanna Coles, A.G. Lafley, Mitchell Lasky,*
17 *Michael Lynton, Stanley Meresman, Scott D.*
18 *Miller, and Christopher Young*
19
20
21
22
23
24
25
26
27
28